

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **JESUS SANTIAGO-MALAVET,**

4 **Appellant,**

5 **v.**

6 **NOREEN WISCOVITCH RENTAS,**

7 **Appellee.**

Civil No. 12-1414 (GAG)

Bankruptcy No. 09-07657 (ESL)

8
9 **ORDER**

10 Presently before the court is the appeal by Jesus Santiago-Malavet (Appellant) of an order
11 issued by the United States Bankruptcy Court for the District of Puerto Rico (Docket No. 1), denying
12 the debtor's motion for a homestead exemption. The issue on appeal is whether the Bankruptcy
13 Court erred in denying Appellants attempts to oppose the trustee's motion to deny Appellant's
14 homestead exemption after the Bankruptcy Court had already ruled on the motion. The court notes
15 the Bankruptcy Court provided an alternative reason to deny the requested relief, but as the
16 Bankruptcy Court's explanation was unnecessary to resolve the matter, the District Court need not
17 review the merits of that portion of the order.

18 Appellate courts reviewing a bankruptcy appeal generally apply the "clearly erroneous"
19 standard to findings of fact and *de novo* review to conclusions of law. TI Fed. Credit Union v.
20 DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); In re Savage Indus., Inc., 43 F.3d 714, 719-20 n.8 (1st
21 Cir. 1994). In addition to the clearly erroneous and *de novo* standards of review, "[t]he appellate
22 court in a bankruptcy appeal may apply an abuse of discretion standard of review of a decision or
23 action by a Bankruptcy Court when such decision is within the discretion of the Bankruptcy Court."
24 Id. (quoting 9E Am.Jur.2d Bankruptcy § 3512 (2004)). "An abuse of discretion may only be found
25 if the lower court's judgement was based upon clearly erroneous factual findings or erroneous legal
26 conclusions." In re Nelson, 251 B.R. 857, 859 (8th Cir. B.A.P. 2000). "Abuse occurs when a
27 material factor deserving significant weight is ignored, when an improper factor is relied upon, or

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1 when all proper and no improper factors are assessed, but the court makes a serious mistake in
2 weighing them.” Perry v. Warner (In re Warner), 247 B.R. 24, 25 (1st Cir. BAP 2000) (quoting
3 Indep. Oil & Chem. Workers of Quincy, Inc. v. Procter & Gamble Mfg., Co., 864 F.2d 927, 929 (1st
4 Cir. 1988)). “A decision regarding abandonment is reviewed for abuse of discretion unless it is
5 based upon a clearly erroneous finding of fact.” Malden Mills Indus., Inc. v. Maroun (In re Malden
6 Mills Indus., Inc.), 303 B.R. 688, 696 (1st Cir. B.A.P. 2004)(citing LeBlanc v. Salem (In re Mailman
7 Steam Carpet Cleaning Corp.), 212 F.3d 632, 634 (1st Cir. 2000)).

8 Appellee has not opposed Appellant’s brief prior to the deadline and beyond. (See Docket
9 No. 4.) The court has reviewed Appellant’s unopposed brief and supporting documents regarding
10 the Bankruptcy Court’s denial of its requested relief. (See Docket Nos. 1, 2 & 3.) The court has no
11 reason to conclude at this time that the case should be remanded to allow Appellant to oppose the
12 Trustee’s motion objecting to Appellant’s homestead exemption. Appellant had the opportunity to
13 object in the first instance and did not do so. The Order issued by the United States Bankruptcy
14 Court for the District of Puerto Rico is hereby **AFFIRMED**.

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16 **SO ORDERED.**

17 In San Juan, Puerto Rico this 16th day of July, 2012.

18 *S/Gustavo A. Gelpí*

19 GUSTAVO A. GELPI
20 United States District Judge
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